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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,499	06/15/2007	Francois Bocquier	0570-1040-	3694
466	7590	11/24/2010	EXAMINER	
YOUNG & THOMPSON			HAYES, KRISTEN C	
209 Madison Street				
Suite 500			ART UNIT	
Alexandria, VA 22314			PAPER NUMBER	
			3643	
			NOTIFICATION DATE	
			DELIVERY MODE	
			11/24/2010	
			ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/583,499	Applicant(s) BOCQUIER, FRANCOIS	
	Examiner KRISTEN C. HAYES	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 47-49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

3. Claim 47 recites the limitation of a *transmitter* transmitting the identification of the female animal. This limitation is not disclosed by the original specification.

4. Claim 48 recites the limitation of the detector determining the result of statistical analysis of mounting attempts. However, the original disclosure states that the means for processing performs this limitation.

5. Claim 49 recites the limitation of the detector processing the identification of the female animal based on a calibration of the detecting animal libido. However, the original disclosure states that the means for processing performs this limitation.

6. Claims 35-54 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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7. In claims 35 and 55, it is unclear how a magnetic field energizes or stimulates the electronic tag.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 39, 40 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

10. In claim 39, it is unclear how the detector writes data onto itself.

11. Claim 40, recites the limitation of a harness holding the detector and an antenna. However, it seems as if the detector is the antenna, as the detector emits a magnetic field (claim 1).

12. In claim 49, it is unclear how the detector process the identification of the female animal based on the calibration of the detecting animal libido. It is unclear how the detecting animal's libido identifies the female animal.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 35, 36 40, 46, 47 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by McAlister US 4,503,808.

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15. Regarding claim 35, McAlister discloses device comprising a passive electronic tag (18) without any source of energy and generating a signal upon detector-activation; a detector (20), activating said electronic tag when the electronic tag is fixed at the organ of the female animal (McAlister, column 5: lines 43-48) and said detector is attached on the detecting animal with a fastener (22), wherein upon being activated, said electronic tag emits an identification of said female animal in an identifying signal modulating the magnetic field and picked up by the detector (McAlister, column 5: lines 45-48), said detector comprising an identifier (McAlister, column 5: lines 42-43, 49-50). The language of "configured to...animal", "configured for...field" and "configured for identifying...tag" is considered function language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
16. Regarding claim 36, McAlister further discloses the electronic tag comprising a support. The language of "configured to...animal" is functional.
17. Regarding claim 40, McAlister further discloses the fastener comprising a harness (22) holding in place the detector, said harness having an antenna (McAlister, column 5: line 45). The language "to receive...attempt" is functional.
18. Regarding claim 46, McAlister further discloses the detector being configured for determining time and date of each mounting attempt (McAlister, column 5: line 44; column 6: line 8).
19. Regarding claim 47, McAlister further discloses the detector comprising a transmitter (McAlister, column 5: lines 45-49) configured to transmit at least one part of the identification of the female animal identified by said identifier.

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20. Regarding claim 54, McAlister discloses the electronic tag comprises a support configured to be fixed at the ear of the female animal (in that the support can be placed under the skin near the ear).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over McAlister US 4,503,808 in view of Blair US 4,895,165.

23. Regarding claim 38, McAlister discloses the device of claim 35 but does not disclose the tag being an RFID tag or the detector being an RFID reader. Blair teaches a system for detection of mounting attempts wherein an RFID tag (10) and an RFID reader are used (Blair, Figure 3, column 3: lines 12-20).). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the tag and detector of McAlister RFID, depending on the distance the signal was required to be transmitted and the desired strength of the signal.

Allowable Subject Matter

24. Claims 35-55 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st and 2nd paragraphs, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

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Response to Arguments

25. Applicant's arguments filed 06/10/2010 have been fully considered but they are not persuasive.

26. The electronic tag of McAlister is considered passive, as it does not include a source of power that than operate on its own. The device is powered by heat or the sun.

27. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the tag not generating any signals until being detector-energized) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

28. The antenna of the detector of McAlister emits a magnetic field energizing the tag, as best understood. The antenna inherently emits electromagnetic waves.

29. The language of "configured to be placed in..." is considered functional, as discussed above. It is noted that the features upon which applicant relies (i.e., the tag fixed at the ear with an ear-tag) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

30. As to the tag and detector being RFID, please see the above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTEN C. HAYES whose telephone number is (571)270-3093. The examiner can normally be reached on Monday-Thursday, 7:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571)272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristen Hayes/
Examiner, Art Unit 3643